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Sent: Friday, April 18, 2014 2:01 PM
To: Rochlin, Kevin; Sheldrake, Beth
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Subject: Shoshone Bannock Tribes Comments 42014
Attachments: Shoshone Bannock Tribes Comments 42014.docx

Categories: Lepic 4/19 to 5/2

Kevin, please find attached the Tribal comments for the Draft Remedial Design, Institutional Controls and Emergency Response Plans which were submitted March 3, 2014. Four other documents were submitted at this time and will be reviewed with comments forthcoming.

Tribes need to stress the importance of compliance with all applicable Tribal laws and regulations which include our Business Licensing, TERO, TOSHA and many others. Based on these documents reviewed to date, FMC is neglecting this obligation. The federal Indian Trust Responsibility is considered one of the more important principles in federal Indian law. It is a legally enforceable fiduciary obligation by the United States to protect tribal lands, assets, resources and treaty rights.

We look forward to working with you and others to protecting our rights and airing our concerns.

Kelly C. Wright

Environmental Waste Management Program Manager

Shoshone Bannock Tribes

Shoshone Bannock Tribes Comments on Draft FMC Remedial Design

April 18, 2014

Tribes are providing these draft comments to EPA as requested but reserve the right to provide additional comments upon further detailed review. Tribe had scheduling conflicts during this timeframe and requested twice for extensions and was granted only one. This Site is located within the exterior boundaries of the Fort Hall Reservation where the Shoshone Bannock Tribes are required to claim as their home. Fort Bridger Treaty was signed as a Peaceful Treaty which provides us the ability to hunt, fish, gather and perform cultural significant activities on unoccupied federal lands. Therefore, Tribal members cannot move off the Reservation unless they want to give up these rights.

General Comments:

- Draft Institutional Controls Plan = clearly FMC needs to re-evaluate their position that the Shoshone Bannock Tribes don't have jurisdiction. This plan needs to document the process of coordination with the Tribes Land Use Policy Commission and/or the Land Use Department. Regardless of the land status, the site is primarily located within the exterior boundaries of the Fort Hall Reservation. Therefore the Land Use Policy Ordinance is clearly in effect.
- Based on recent findings at the FMC site, Tribes want to make sure any undisturbed areas especially the Western and Southern have had a thorough cultural archeological survey completed prior to any work.
- FMC and their contractors must comply with all Tribal laws and regulations while conducting any and all work associated with lands located within the exterior boundary of the Fort Hall Reservation.

Specific Comments:

1. Page 2, 1st Paragraph = states that FMC contributes less than 5%. Is that this accurate based on the pump and treat that Simplot has been doing now? I would suggest that this referenced number be removed and simply use the wording in the parentheses. If not, it would be more appropriate to increase this number to less than 10% to be factual. These calculations are based on the Simplot 2013 Annual Report.
2. Page 9, Section 2.2.6.2 = need to include the fact that northern areas include lands owned and operated by the City of Pocatello who don't respond to Power County but rather Bannock County.

3. Page 11, Section 2.3.2 = EPA has the authority to enforce ICs on Tribal Lands? Same concern that Power County? Granted the land may be considered as fee status but these lands are impacting tribal resources and are primarily located within the exterior boundaries of the Fort Hall Reservation.
4. Page 19, Section 3.3 = Tribes also have jurisdiction over these lands which are located within the exterior boundaries of the Fort Hall Reservation and must be included in this section.
5. Page 20, Section 3.3 = most of the lands located to the north west of this site are owned and operated by the City of Pocatello which is not regulated by Power County but Bannock County so Bannock County needs to be included if you're going to continue to focus on County authorities.
6. Tables 1 and 2 uses EPA industrial risks numbers but neglect to include all ARARs which need to address the Tribal standards.
7. Table 3 lacking Tribal Codes
8. Appendix D, no Tribal representation.
9. Draft Emergency Response Plan, Section 4.1 = needs to include information about elemental phosphorus which is both ignitable and reactive. Site does have it located throughout and emergency responders should be aware of all hazards associated with this site.
10. Emergency Response Plan is lacking personal protective equipment specifically breathing apparatus more than likely to be a self-contained unit especially in the RCRA Pond Areas. If an employee is noted as down, SCBA should be used to retrieve this employee depending upon the nature of employee working.
11. SPCC Plan = The FMC facility is far from a zero discharge facility. Terminology needs to be corrected.
12. SPCC Plan Section 5.2 = Personnel training should recognize OSHA training requirements as well as TOSHA training requirements.
13. Section 5.2 = Oil/fuel handling training should be done with all field personnel to ensure in case of an emergency, any and all employees/contractors are appropriately trained for addressing the concern.
14. Section 5.3 = Construction Manager should be accountable for all spills regardless of what material not just oils.
15. Section 5.6 = Monthly inspections must be recorded and details maintained onsite with access by regulators. This information is also part of the SPCC records and needs to be kept.
16. Section 6.1 = MSDSs do not exist as of January 1, 2014. They are now called SDS (Safety Data Sheets) so this needs to be changed with any references in all proposed documents.
17. Section 6.3 = Need to include "Tribes" in all applicable local, state and federal laws.

18. Section 6.4 = Need to change “analysis” to “analyses”. The first is for a single test and the other is for plural testing.
19. Draft Remedial Design, Introduction = FMC is located on the Fort Hall Reservation which was founded in 1868 through the Fort Bridger Treaty and was a Peace Treaty. With that, the State of Idaho was founded in 1890, 22 after the Reservation.
20. Section 1.4, as stated time and time again, Shoshone Bannock Tribes need to be actively included at the table so that they can assure that their homelands are not being impacted for the next generations.
21. Section 1.4.3 FMC and their contractors (MWH) are required to obtain the necessary licensing and comply with the TERO requirements.
22. Page 2-6, Based on the 2013 Simplot Annual Report, FMC is contributing 10% of the contaminants in the Portneuf. Needs to be corrected.
23. Page 2-9, Section 2.4.2 = Evapotranspiration caps will not prevent contaminants from entering the groundwater. This is a misleading statement. These sorts of caps are designed to decrease the possibility of each reaching the wastes but not preventing.
24. Page 2-10, Residential exposure? According to all earlier documents, no residential use will be allowed based on the Institutional Controls.
25. Page 3-1, FMC claims to have a zero storm water discharge. This is an inaccurate statement based on existing data.
26. Page 3-2 ET caps do not eliminate infiltration. Tribes would agree with the first part of minimizing. Only way possible for elimination would be removal.
27. Page 3-3 RA-F1, Railcars are known to contain elemental phosphorus and all of the COCs based on the fact that they could not be appropriately cleaned out but were buried with an unknown quantity and quality of material inside. With the concept for regarding the slag pile requiring moving 1 million tons of slag around these railcars should be removed and properly treated rather than waiting for contaminants to be released in the future. That is based on Objective #2 mentioned below on this Page.
28. Page 3-6, States that an appropriate landfill will be used. Tribes do not agree that this site has any approved or appropriate landfills on site. FMC has historically illegally dump hazardous waste in a variety of locations. Given the recent finding of a significant cultural archeological artifact, Tribes are opposed and request EPA to consider imposing a ban on any future onsite disposal.
29. Page 3-8, Gas Monitoring Objectives = needs to include continuous monitoring for phosphine and possibly other toxic gases when workers are in or around any areas where elemental phosphorus is known to be located.
30. RCRA Pond work or integration thereof must include continuous monitoring for worker protection whether it raised manholes or moving fences especially working on the leachate collection systems.
31. Page 4-5, References Table 5.3 which is an error, needs to be Table 4.3

32. Page 5-6, Table 5.3 lists several culturally sensitive species of vegetation that will need to be included in the routine monitoring program.
33. Section 01060 Permits – Tribal Business Licensing, TOSHA and TERO will be mandatory requirements for all activities conducted within the exterior boundaries of the Fort Hall Reservation.
34. Draft Site-wide Stormwater Plan = Water being placed in a basin to the south of the RA-F needs caution. The area where the waste disposed from the water treatment process contained elevated concentrations of Cu. Copper is not something that should be leached into the groundwater. Other locations across the FMC site had been disposal sites for a variety of waste such as the water treated by the LDR plant that was used as a dust suppressant.
35. Tribes are concern that these nine basins may become back up basins for holding the pump and treat waters. If these are, additional studies must be conducted prior to allowing any of that such as percolation rates, impacts to the Vadose and the additional constituents being added to the Portneuf River.
36. Another concern is with the 24 hour storm event, last year the surrounding areas received a lot of precipitation in a 1 to 2 hour event leaving many areas flooded.
37. Wells are being abandoned regardless of being RCRA and CERCLA, how are we supposed to be monitoring the impacts for the various basins and other activities going on. Abandoning wells at this point in time is not justifiable.